

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554
JUN 06 2001

*no action
necessary*
86-285

OFFICE OF
MANAGING DIRECTOR

George L. Lyon, Jr., Esq.
Lukas, Nace, Gutierrez & Sachs, Chtd.
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036

Re: Sempra Energy
Assignment of Private Operational Fixed Microwave
Stations from Cardinal Acquisition Corporation to KN
Energy, Inc.
Fee Control No. 9908168130071006

Dear Mr. Lyon:

This is in response to your request filed on behalf of KN Energy, Inc. (KN Energy) for a fee determination, waiver, and refund filed with respect to the application to assign 75 private operational fixed service (POFS) microwave station licenses from Cardinal Acquisition Corporation to KN Energy. KN Energy filed the assignment application and the associated \$15,000.00 filing fee on August 13, 1999. You assert that the imposition of a filing fee of \$200.00 for each microwave station license is unjustified and excessive. You request that the amount of the filing fee be reduced to \$3,530.00 (i.e., \$200.00 for the first license and \$45.00 for each of the 74 remaining licenses) and that KN Energy be issued a refund of \$11,470.00.

You maintain that there is an unreasonable disparity between the filing fees for the assignment of POFS microwave stations as compared to the filing fees for the transfer of control of such stations, and the assignment and transfer of control of non-POFS microwave stations. Specifically, noting that the filing fees for the assignment and transfer of control of certain non-POFS microwave stations are identical,¹ you claim that the disparity between the \$200.00 filing fee for the assignment of a POFS microwave station and the \$45.00 filing fee for the transfer of control of such a station² cannot be justified based upon processing costs because transfer of control applications require the submission of more information than do assignment applications. You maintain that the incongruity among the filing fees is underscored by the fact that the fee for additional call signs beyond the first assignment or transfer of control for both common carrier point-to-point microwave stations and digital electronic message stations (DEMS) microwave stations is \$45.00, whereas the fee for additional call signs beyond the first POFS microwave station remains at \$200.00.³ You assert that the disparity among the filing fees cannot be justified based on processing costs because, *inter alia*, each of these applications is processed on the same

¹ KN Energy Request at 2 (noting that the filing fee for the assignment and transfer of control of a common carrier point-to-point microwave station is \$75.00, as is the filing fee for the assignment and transfer of control of common carrier digital electronic message stations (DEMS) (*citing* C.F.R. §§1.1102(39)(e),(f) and 1.1102(40)(e)(f).)

² See 47 C.F.R. §§1.1102(14)(c) and 1.1102(35).

³ See 47 C.F.R. §§1.1102(39)(g), 1.1102(40)(g), and 1.1102(14).

form, i.e., FCC Form 603. You claim that the disparity likewise cannot be based on the nature of the service being provided because licensees of common carrier point-to-point microwave stations and DEMS stations use spectrum to deliver communications services to the public commercially, whereas POFS licensees predominately use their facilities for internal communications needs and do not offer service to the public at large. You also assert that the Commission has reduced the filing fee associated with assignment applications involving multiple licenses in circumstances similar to the instant assignment application.⁴ You argue that the filing fees associated with multiple assignments of POFS licenses are extremely burdensome and that POFS networks should not be subject to financial penalty because they support critical infrastructure network providers.⁵

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. §158(d)(2); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 961 (1987) (*Report and Order*); 47 C.F.R. §1.1117. The Commission has noted that section 158(d)(2) waivers are permitted “only on a case-by-case basis following a demonstration that the public interest clearly overrides the private interest of the requester.” *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994).

With respect to your assertion that the filing fee associated with KN Energy’s assignment application is unjustified and excessive in comparison to the filing fees imposed on other transactions and in light of the underlying processing costs, we note that our waiver authority is not intended to correct perceived inequalities in the statute itself, but for good cause shown in individual situations. Further, it is not our policy to use our waiver authority to make individualized determinations of fees based on actual costs incurred. Instead, unless “the public interest requires otherwise, we will levy the fee as determined by Congress.” *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 3 FCC Rcd 5987 (1988). Indeed, the Commission has stated that there is “no justification in the statute or legislative history for apportioning fees according to the actual work done on any particular application.” *Report and Order*, 2 FCC Rcd at 949. We “worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the *typical* application or filing.” *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, 5 FCC Rcd 3558, 3574 (1990) (emphasis added). KN Energy has made no showing that the \$200.00 filing fee imposed on each assigned license at issue here exceeds the direct costs of processing the typical application in this service. Further, the Commission has stated, in rejecting comments that we should not implement certain statutory fees based on perceptions that fees were unreasonably disparate or not related to processing costs, that “processing costs were but one factor in the

⁴ KN Energy Request at 3-4 (citing Letter from Managing Director to U.S. West NewVector Group, Inc. (dated Sept. 22, 1989) (*NewVector Letter Decision*) (granting a waiver request reducing the filing fee associated with the assignment of 105 two-way licenses from \$21,000 to \$1,800 and the filing fee associated with the assignment of 45 Rural Radio licenses from \$4,050 to \$810), Letter from Managing Director to Joseph Godles, Esq. and Sharon C. Pavlos (dated Dec. 21, 1987) (*Equatorial Communications Letter*) (granting a waiver request reducing the filing fee associated with applications to transfer control approximately 5,000 C-band satellite earth stations from \$450,000 to \$9,000), Letter from Managing Director to Peter Tannenwald, Esq. (dated Apr. 16, 1990) (*IDB Communications Letter*) (granting a waiver request reducing the filing fee associated with applications to transfer control of 115 satellite earth stations from \$51,750 to \$2,700).

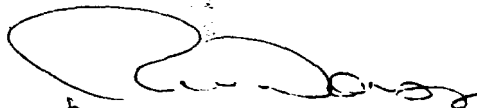
rough calculus that resulted in the legislated fees. *Report and Order*, 2 FCC Rcd at 949. We therefore reject your request for waiver or reduction on this basis.

With respect to your assertion that a waiver of the filing fees associated with KN Energy's assignment application is warranted based on certain earlier rulings, we reiterate that the Commission may grant waiver requests on a case-by-case basis, but we note that the facts before us are not sufficient, for the reasons set forth above, to warrant the relief sought. You have neither demonstrated that the public interest clearly overrides the interests of the parties involved here nor otherwise established that the public interest would be served by a grant of your waiver request in conflict with the Congressionally-mandated schedule of fees.

To the extent that you argue that the filing fee is "burdensome" and therefore represents a financial hardship, we note that you have submitted no documentation to demonstrate that the fee payments impose an undue burden. *See, generally, Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *on recon*, 10 FCC Rcd 12759 (1995) (the Commission will waive, reduce or defer its fees in those instances where a petitioner presents a compelling case of financial hardship and submits documentation that demonstrates that the fee payments impose an undue burden). In the absence of such documentation, we find that you have failed to make a compelling showing that the public interest would be served by a waiver or a reduction of KN Energy's filing fees on this basis.

We therefore find no basis to support your request for a fee determination, waiver, and refund of the filing fees associated with KN Energy's assignment application. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Reger", with a stylized flourish at the end.

Mark Reger
Chief Financial Officer